

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)	Chapter 11
)	
EASTERN LIVESTOCK CO., LLC,)	Case No. 10-93904-BHL-11
)	
Debtor.)	Hon. Basil H. Lorch III
)	
FRIONA INDUSTRIES, L.P.,)	
)	
Plaintiff,)	
)	
v.)	Adversary Proceeding No. 11-59093
)	
EASTERN LIVESTOCK CO., LLC, et al.,)	
)	
Defendants.)	
)	
and)	
)	
CACTUS GROWERS, INC.,)	
)	
Intervenor,)	
)	
v.)	
)	
EASTERN LIVESTOCK CO., LLC, et al.,)	
)	
and)	
)	
J & F OKLAHOMA HOLDINGS, INC.,)	
)	
Intervenor,)	
)	
v.)	
)	
EASTERN LIVESTOCK CO., LLC, et al.,)	
)	
Defendants.)	

**TRUSTEE'S MOTION TO APPROVE COMPROMISE AND TO RELEASE
INTERPLEADED FUNDS RELATING TO NICHOLS LIVESTOCK**

James A. Knauer ("Trustee"), trustee of the estate ("Estate") of the debtor, Eastern Livestock Company, LLC ("ELC" or "Eastern"), respectfully moves the Court for an order approving a proposed compromise and authorizing the release of \$109,389.39 ("Nichols Funds") from the interpleaded funds in the Court's registry for this adversary proceeding. In view of the Settlement Agreement attached hereto as Exhibit 1, no further controversy exists concerning ownership of the Nichols Funds. In further support of this motion, the Trustee states as follows:

1. On November 11, 2010, Friona Industries, L.P. ("Friona") filed an interpleader complaint in the United States District Court for the Northern District of Texas, Amarillo Division, Case No. 2:10-cv-00266 (the "Texas Litigation"). Cactus Growers, Inc. ("Cactus") and J&F Oklahoma Holdings, Inc. ("J&F") intervened and interpleaded additional funds.

2. On April 1, 2011, the Texas Litigation was referred to the United States Bankruptcy Court for the Northern District of Texas, Amarillo Division, for the purpose of transferring the case to this Court for final disposition in conjunction with the pending Eastern bankruptcy case.

3. On April 15, 2011, the United States Bankruptcy Court for the Northern District of Texas, Amarillo Division, signed an order transferring venue of the case to this Court and ordering that the clerk for the Northern District of Texas transfer to the Clerk of this Court all interpleaded funds in the Texas Litigation.

4. The funds that Cactus interpleaded in this adversary proceeding include the sum of \$109,389.39, which Cactus owes for its purchase of 125 steers. The Trustee and Fifth Third Bank have claimed rights in the Nichols Funds. Robert Nichols and Jane Nichols d/b/a Nichols Livestock, and Jane, L.L.C. (together, "Nichols") also claimed the Nichols Funds.

6. Attached hereto as Exhibit 2 is a Stipulation among the Trustee, Fifth Third, Cactus, and Nichols. These parties agree that the subject cattle were not delivered to Eastern and were not delivered to Cactus for Eastern's benefit. Stip. ¶ 3.

7. These parties also agree that the Court should take no further action with respect to the now vacated summary judgment ruling and motions to reconsider. Stip. ¶ 4. Their agreement is not intended to affect any other claims or rights in connection with this case, including, in particular, the claims the Trustee has asserted against Nichols and others in Adversary Proceeding No. 12-59161. Stip. ¶ 5 .

8. As stated in the Settlement Agreement (Ex. 1), the Trustee, Fifth Third, Cactus, and Nichols desire to resolve and settle all disputes concerning the Nichols Funds without further litigation. They have agreed to the valuation of the 125 steers negotiated between Cactus and Nichols. They have agreed that the Nichols Funds should be released to Nichols and, in exchange, all controversies and claims concerning those cattle transactions and ownership of the cattle proceeds should be released and put to rest.

9. The proposed settlement will avoid the expense and delay of further litigation by resolving all controversies about the Nichols Funds. This reduces expenses to the Estate and the parties.

8. Trustee, Nichols, Fifth Third, and Cactus further agree that it is not necessary for the Court to reinstate its prior summary judgment ruling or for the Court to take any further action with respect to any motions to reconsider that ruling.

9. The Trustee will provide notice of this Motion pursuant to FED. R. BANK. P. 2002(a)(3) or as otherwise directed by this Court. The Notice shall include a definitive time in

which any party will be required to file and serve an objection stating with specificity its objection.

WHEREFORE, Trustee James Knauer respectfully requests the Court to approve the compromise set forth in the accompanying Settlement Agreement and to enter the proposed Order which directs the Clerk to pay the sum of \$109,389.39 from the interpleaded funds by check payable to the order of "Robert and Jane Nichols d/b/a Nichols Livestock."

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Kevin M. Toner

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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on May 10, 2013, a copy of the foregoing pleading was mailed by first-class U.S. Mail, postage prepaid and properly addressed, to the following:

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/s/ Kevin M. Toner

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